

House Study Bill 91

SENATE/HOUSE FILE _____
BY (PROPOSED CITIZENS'
AIDE/OMBUDSMAN BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the imposition of civil penalties for the
2 unlawful commercialization of wildlife.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1278DP 81
5 av/sh/8

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1 1 Section 1. Section 481A.136, Code 2005, is amended by
1 2 adding the following new subsection:
1 3 NEW SUBSECTION. 3. A person violating subsection 1 may be
1 4 subject to a civil penalty as provided in section 481A.136A.
1 5 Sec. 2. NEW SECTION. 481A.136A VIOLATIONS == CIVIL
1 6 PENALTIES.
1 7 1. The commission shall establish, by rule, a schedule or
1 8 range of civil penalties which may be administratively
1 9 assessed for the unlawful commercialization of wildlife in
1 10 violation of section 481A.136. The department shall have the
1 11 discretion to administratively assess a civil penalty pursuant
1 12 to this section in lieu of or in addition to other penalties
1 13 authorized for such a violation under this chapter. The
1 14 schedule shall provide procedures and criteria for the
1 15 administrative assessment of penalties of not more than ten
1 16 thousand dollars for violations of section 481A.136 or rules
1 17 adopted pursuant to that section. In adopting a schedule or
1 18 range of penalties and in proposing or assessing a penalty,
1 19 the commission and the department shall consider among other
1 20 relevant factors the following:
1 21 a. The value of the wildlife unlawfully bought or sold by
1 22 the violator.
1 23 b. The gravity of the violation.
1 24 c. The degree of culpability of the violator.
1 25 d. The maximum penalty authorized for the violation under
1 26 this chapter.
1 27 Penalties may be administratively assessed pursuant to this
1 28 section only after an opportunity for a contested case
1 29 hearing, which may be combined with a hearing on the merits of
1 30 the alleged violation. Violations not fitting within the
1 31 schedule, or violations which the commission determines are
1 32 appropriate for referral to a county attorney for legal
1 33 action, shall not be governed by the schedule established
1 34 under this section.
1 35 2. In establishing a schedule for violations of section
2 1 481A.136, the commission shall provide, by rule, a procedure
2 2 for screening alleged violations to determine which cases may
2 3 be appropriate for the administrative assessment of penalties.
2 4 However, the screening procedure shall not limit the
2 5 discretion of the department to refer any case to a county
2 6 attorney for legal action.
2 7 3. A penalty assessed pursuant to this section shall be
2 8 paid within thirty days of the date the order assessing the
2 9 penalty becomes final. If a person against whom a civil
2 10 penalty is assessed under this section seeks timely judicial
2 11 review of an order imposing the penalty as provided under
2 12 chapter 17A, the order is not final for the purposes of this
2 13 section until all judicial review processes are completed.
2 14 Additional judicial review shall not be sought after the order
2 15 becomes final. A person who fails to timely pay a civil
2 16 penalty assessed by a final order of the department shall pay,
2 17 in addition, interest at the rate of one and one-half percent
2 18 of the unpaid balance of the assessed penalty for each month
2 19 or part of a month that the penalty remains unpaid. The

2 20 attorney general shall institute, at the request of the
2 21 department, summary proceedings to recover the penalty and any
2 22 accrued interest.

2 23 4. All civil penalties assessed by the department and
2 24 interest on the penalties shall be deposited in the state fish
2 25 and game protection fund.

2 26 5. This section does not require the commission or the
2 27 department to pursue an administrative remedy in the courts of
2 28 this state prior to seeking a judicial remedy.

2 29 EXPLANATION

2 30 This bill provides for the imposition of civil penalties
2 31 for the unlawful commercialization of wildlife by a person who
2 32 buys or sells a wild animal or part of a wild animal that is
2 33 taken, transported, or possessed in violation of state law or
2 34 rules.

2 35 The bill amends Code section 481A.136 to provide that a
3 1 person who violates the section by the unlawful
3 2 commercialization of wildlife may be subject to a civil
3 3 penalty as provided in new Code section 481A.136A.

3 4 New Code section 481A.136A requires the natural resource
3 5 commission to establish, by rule, a schedule or range of civil
3 6 penalties which may be administratively assessed against a
3 7 person for the unlawful commercialization of wildlife. The
3 8 bill provides that the department shall have the discretion to
3 9 administratively assess such a civil penalty in lieu of or in
3 10 addition to other penalties authorized for such a violation.
3 11 The bill provides that the schedule shall provide procedures
3 12 and criteria for the assessment of such penalties, of not more
3 13 than \$10,000, including consideration of the value of the
3 14 wildlife unlawfully bought or sold by the violator, the
3 15 gravity of the violation, the degree of culpability of the
3 16 violator, and the maximum penalty authorized for the violation
3 17 under the Code chapter.

3 18 The bill also provides that the civil penalties may be
3 19 assessed only after an opportunity for a contested case
3 20 hearing, which may be combined with a hearing on the merits of
3 21 the alleged violation. Violations not fitting within the
3 22 schedule of penalties, or which the natural resource
3 23 commission determines are appropriate for referral to a county
3 24 attorney for legal action, are not governed by the new Code
3 25 section.

3 26 The bill requires the natural resource commission to
3 27 provide, by rule, for a screening procedure to determine which
3 28 cases may be appropriate for the administrative assessment of
3 29 penalties although the screening procedure cannot limit the
3 30 discretion of the department of natural resources to refer any
3 31 case to a county attorney for legal action.

3 32 A penalty assessed pursuant to new Code section 481A.136A
3 33 must be paid within 30 days of the date the assessment order
3 34 becomes final, unless the person against whom the penalty is
3 35 assessed seeks timely judicial review under Code chapter 17A.

4 1 A person who fails to timely pay such a penalty is also liable
4 2 to pay interest at the rate of 1.5 percent of the unpaid
4 3 balance of the penalty for each month or part of a month that
4 4 the penalty remains unpaid. All civil penalties collected
4 5 pursuant to this section are required to be deposited in the
4 6 state fish and game protection fund. The attorney general is
4 7 required to institute summary proceedings to recover any
4 8 penalties assessed, with interest, at the request of the
4 9 department of natural resources. The new section does not
4 10 require either the natural resource commission or the
4 11 department of natural resources to pursue an administrative
4 12 remedy prior to seeking a judicial remedy.

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